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IN THE

# Supreme Court of the United States

October Term, 1952.

No. 517.

OLIVE B. BARROWS, RICHARD PIKKAR and M. M. O'GARA,

*Petitioners,*

*vs.*

LEOLA JACKSON,

*Respondent.*

**Petition for Rehearing After Hearing and Decision on the Merits on Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.**

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LEOLA JACKSON,

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**Petition for Rehearing After Hearing and Decision on the Merits on Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.**

Petitioners pray that a rehearing be granted to review the decision of this Court rendered June 15, 1953, in the above entitled cause.

## I.

## Statement of the Case.

On or about the 21st day of October, 1944, petitioners Barrows [R. 1] and O'Gara [R. 2] and the ancestor in title of petitioner Pikkar [R. 2], and respondent Leola Jackson [R. 2], each owned lots in Tract 1462 in the City of Los Angeles. On or about that date, in consideration of the mutual benefit to themselves and their respective properties, said owners, including respondent, executed and

caused to be recorded an "agreement imposing restrictions" [R. 2]. By the terms of said agreement each of the signers promised and bound himself, his heirs, executors, administrators, successors and assigns, by a continuing covenant, that no part of his said real property described therein should ever at any time be used or occupied by any person or persons not wholly of the white or Caucasian race [R. 3]. By the terms of said agreement each of the signers further promised that this restriction should be incorporated in all papers and transfers of lots or parcels of land of said signers [R. 3].

On or about February 2, 1950, respondent, Leola Jackson, and one Dorothy May Grace, executed a grant deed to Pearnell Smalley and Florine Smalley [R. 4]. Respondent, Leola Jackson, failed to incorporate in said deed the restrictions contained in said agreement against use and occupancy by persons not wholly of the white or Caucasian race, which failure constituted the first breach of respondent's contract complained of by petitioners [R. 5].

On or about September 4, 1950, persons not of the white or Caucasion race moved into and began to use and occupy the property as to which respondent had contracted that it would never at any time be used or occupied by persons not of the white or Caucasian race [R. 4]. Said use and occupancy on or about and after the 4th day of September, 1950, constituted the second breach of respondent's contract complained of by petitioners. As a result of the breaches of contract, and each of them, petitioners have suffered actual and severe depreciation in the value of their property, as alleged in their second amended complaint [R. 5 and 6]. Respondent's demurrer was sustained without

leave to amend [R. 16]. The District Court of Appeal of the State of California, Second Appellate District, held that the complaint states a cause of action for damages for breach of contract under the common law principles of California [R. 32, 34] and that the covenant is constitutionally a valid agreement [R. 34], but that because of *Shelley v. Kraemer,* 334 U. S. 1, the courts of California may not permit petitioners to recover their actual provable monetary damages [R. 56].

The opinion of the majority of this Court held that although the contract sued upon is valid and although respondent would not be deprived of any of *her* constitutional rights by a judgment for the damages suffered by petitioners, yet respondent could assert constitutional rights claimed by "non-Caucasians, unidentified but identifiable" as possible future bidders for unidentified land from prospective sellers.

**A. An Exception to a Jurisdictional Limitation Which Had No Exceptions.**

An exception should not be recognized to a jurisdictional limitation which had no exception without the benefit of full and complete consideration in the briefs and arguments of the parties. The opinion of the majority in the case at bar is based upon the asserted rights of unknown persons with no standing in this litigation. In justification, the majority opinion has held on page 5, that the rule of standing and interest has application only in cases challenging the constitutionality of a statute:

> "The common thread underlying both requirements is that a person cannot challenge the constitutionality of a *statute* unless he shows that he himself is injured by its operation." (Emphasis added.)

This distinction between a statute and other state action is emphasized by the use of the phrase "state action" in the sentence preceding the one quoted, balanced against the use of the word "statute" in the sentence quoted, and is further emphasized by footnote number 3 which uses the word "statute" in the statement of nearly every case cited, and the other cases cited obviously involved a statute.

The distinction relied upon is again emphasized on page 6 of the decision in these words:

> "There are still other cases in which the Court has held that even though a party will suffer a direct substantial injury from application of a *statute*, he cannot challenge its constitutionality unless he can show that he is within the class whose constitutional rights are allegedly infringed." (Emphasis added.)

The reliance upon a distinction between legislative action and other state action is further developed on page 6 of the majority opinion by the statement of a reason for the rule of "standing" applying only to tests of statutes:

> "One reason for this ruling is that the state courts, when actually faced with the question, might narrowly construe the statute to obliterate the objectionable feature, or it might declare the unconstitutional provisions separable."

Another reason why the "standing rule" should be applied in testing statutes only is given on page 7 of the opinion to add to the validity of the distinction relied upon by the majority as a justification for exceeding the "con-

stitutional limitation on the jurisdiction of this Court to 'cases' and 'controversies.'" (See Majority Opinion p. 5.)

> "It would indeed be undesirable for this Court to consider every conceivable situation which might possibly arise in the application of complex and comprehensive legislation. Nor are we so ready to frustrate the express will of Congress or that of the state legislature."

The distinction relied upon by the majority is expressly set forth on page 7 of the opinion in these words:

> "But in the instant case, we are faced with a unique situation in which it is the action of the state *court* which *might* result in a denial of constitutional rights . . ." (The word *"court"* is emphasized by the opinion; emphasis has been added to the word "might.")

The Court has taken a very radical and far-reaching step in thus limiting the "standing" rule to litigation testing the constitutionality of statutes only. Only after thus limiting the "standing rule" to litigation testing statutes does the majority opinion state, "This is a salutary rule, the validity of which we reaffirm."

Aside from the constitutional authority of this Court to open its doors to the *friends* of persons affected by state action other than legislative action, the departure from the formerly invariable limitation must result in great mischief by permitting the Court to go out of its way to protect supposed rights, because in so doing the Court must assume situations which may never arise.

Thereby the Court will, in more ways than can now be foreseen, prevent litigants from enjoying rights which they might otherwise have enjoyed. This case is an example.

If this distinction is permitted to continue to represent the views of the Court, it will be applied by state courts to situations beyond the present contemplation of this Court; and many years, perhaps, decades, will be required for this Court to circumscribe the aberrations. The injustices suffered in the meantime could never be undone. It has been said that hard cases make bad laws, and unfortunately this is sometimes true. If the Court is not in sympathy with the petitioners or their exercise of their freedom, this should not cause it to depart from an invariable limitation on constitutional jurisdiction[1] and thereby open Pandora's box and loose its contents on future litigation.

Contract cases are not the only ones which will be revolutionized by the distinction spelled out by the majority opinion. All cases not involving a statute will become the arena for seriously championing the nebulous rights of strangers, unidentified but equally identifiable. The courts will feel free to rely on this shimmering image, the rights of strangers, undefinable, unlimited, having no existence in any justiciable set of facts, and relying thereon to destroy constitutional property rights "which *might* result

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[1]Mr. Justice Frankfurter, concurring in *Coleman v. Miller*, 307 U. S. 433, 461:

> "No matter how seriously infringement of the Constitution may be called into question, this is not the tribunal for its challenge except by those who have some specialized interest of their own to vindicate, apart from a political concern which belongs to all. Stearns v. Wood, 236 U. S. 75; Fairchild v. Hughes, 258 U. S. 126."

in a denial of constitutional rights . . . ." (Emphasis added.)

This distinction between the testing of state action by a legislature and the testing of state action by a court is particularly difficult to appreciate in view of the unanimous opinion of this Court in *Shelly v. Kraemer*, 334 U. S. 1, wherein the bulk of the opinion was devoted to showing that court action is state action the same as legislative action and must be tested by the same rules. Now we are told that the Constitution itself limits the jurisdiction of this Court in testing statutes[2] but not in testing the action of state courts.

Petitioners can find no authority for this distinction. The authorities cited by the majority opinion do not support this distinction. The majority cites the case of *Pierce v. Society of Sisters*, 268 U. S. 510, but this case does not recognize this distinction, nor any distinction, nor any exception to the constitutional limitation of the jurisdiction of this Court to the adjudication of the constitutional rights of the litigants only. In the case of *Pierce v. Society of Sisters* (*supra*) the Oregon statute deprived the appellees of a constitutionally recognized property right. The consideration of the rights of parents and guardians was only material to the determination of the reasonableness of the legislation. This is a question which must be dealt with in statute cases, but it has no constitutional significance in contract cases. The rights of litigants limited by legislation and the rea-

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[2]The requirement of standing is often used to describe the constitutional limitation on the jurisdiction of this Court to 'cases' and 'controversies.' See Coleman v. Miller, 307 U. S. 433, 464 (concurring opinion)." (See Majority Opinon p. 5.)

sonableness of the legislation are two distinct considerations and should not be confused; but petitioners respectfully submit that this Court has confused them in order to cite *Pierce v. Society of Sisters, supra,* in this contract case. Suppose the *Pierce* case involved a contract rather than a statute. Suppose the parents and guardians had made a valid contract among themselves to send their children to public school. If one of the parties breached this agreement and another party plaintiff could prove some damage, what *constitutional* defense could the party defendant raise? Could he cite *Pierce v. Society of Sisters* on the reasonableness of similar legislation or to show the constitutional right of the school upon which the *Pierce* case was based? That the *Pierce* case was decided upon the right of the appellees in conformity with the constitutional requirement is plain from the following language:

> "Appellees asked protection against arbitrary, unreasonable, and unlawful interference with their patrons, and the consequent *destruction of their business and property.* Their interest is clear and immediate, within the rule approved in Truax v. Raich, Truax v. Corrigan, and Terrance v. Thompson, *supra,* and many other cases where injunctions have issued to protect business enterprises against interference with the freedom of patrons or customers." (Emphasis added.)
>
> *Pierce v. Society of Sisters,* 268 U. S. 510, 536, 69 L. Ed. 1070.

The cases cited in this quotation conclusively establish the fact that the Court was adjudicating the rights of the appellees not that of strangers. *Truax v. Raich* will

be dealt with more thoroughly because it has been cited along with the *Pierce* case as authority for departing from the "standing rule." The other two cases will be touched only lightly.

In *Truax v. Corrigan* (1921), 257 U. S. 312, 66 L. Ed. 254, an employer was denied an injunction against peaceful picketing although all the facts required to state a course of action in equity were stated in the complaint. The denial was based solely upon a statute preventing injunction against peaceful picketing. The view of courts upon the constitutionality of such statutes has changed some since 1921, but that does not change the fact that the employer was asserting his own alleged constitutional rights, and the decision was based solely on the rights of the employer as they were then found to exist, not on the rights of strangers. The appellees in *Pierce v. Society of Sisters* showed their interest as clearly and immediately as did the employer in *Truax v. Corrigan, supra.*

In *Terrance v. Thompson* (1923), 263 U. S. 197, 68 L. Ed. 255, the appellants challenged the constitutionality of the Alien Land Law of the State of Washington. One of the appellants owned land and was prevented by the statute from leasing it to the other appellant. The other appellant was an ineligible alien prevented by the statute from taking the lease. (It should be kept in mind that this limitation was by statute without the consent of the appellants; it was not by contract to which all litigants were consenting parties.) The view of some courts, at least, have changed since 1923 as to the constitutionality of alien land laws, but that does not change the fact that the landowner and the proposed tenant were as-

serting their own constitutional rights not the right of strangers. The opinion in the *Pierce* case was expressly based upon the interest of the appellees which was expressly recognized to be as "clear and immediate" as that of the landowner and proposed tenant in *Terrance v. Thompson, supra.*

Suppose the *Pierce* case were based upon a contract among the schools themselves. Suppose they contracted among themselves by a valid contract not to enroll pupils from a certain district. Suppose one of the schools which executed the contract breached the contract, and another school which also executed the contract filed suit against the first school and could show actual damages. What *constiutional* defense could the defendant school raise? Could the defendant school cite *Pierce v. Society of Sisters, supra?*

These are not idle suppositions. The practice of citing statute cases to justify a decision in a contract case may in some situations have logical justification, but there can be no logical justification for citing a statute case solely for its language and reasoning in deciding the reasonableness of the statute. That language and reasoning has no constitutional relevancy to the enforcement of a contract between the litigants which may even seem unreasonable, because the litigants have accepted the terms and have been paid for their acceptance and have consented to be bound by the terms. If the terms are too unreasonable, the common law of the state or the statutes of the state will reach them, but the Constitution of the United States is not concerned with any such test of a contract as distinguished from a statute or other state action *not consented to.*

The majority opinion cites the case of *Truax v. Raich,* 239 U. S. 33; 60 L. Ed. 131, as authority for permitting respondent to rely solely upon the rights of an amorphous class. Petitioners respectfully submit that the opinion in *Truax v. Raich* recognized no exception to the "standing rule" but instead expressly brought the complainant within the rule and decided the constitutionality of the challenged legislation solely upon the rights of the litigant.

The *Pierce* case, *supra,* and *Truax v. Raich, supra,* belong in a well recognized class of cases which test the constitutionality of statutes by the constitutional rights of *litigants* whose constitutional rights are indirectly affected by the legislation, but nevertheless it is the constitutional rights of the *litigants* of the class to which *they* belong which is controlling on "standing," never the constitutional rights of an amorphous class of strangers.

In *Truax v. Raich, supra,* a statute of Arizona was about to take effect which purported to prevent anyone employing 5 or more persons from employing over 20% of aliens. Raich was an alien. His employer employed over 5 employees. His employer had notified him that he would be discharged when the statute took effect and that the statute would be the sole cause of the discharge. Raich brought suit to prevent this irreparable injury to him on the grounds that the statute was unconstitutional because it deprived him of his constitutional right to "the ordinary means of earning a livelihood" in violation of the Fourteenth Amendment to the Constitution of the United States.

> "It requires no argument to show that the right to work for a living in the common occupations of

the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment to secure."

*Truax v. Raich*, 239 U. S. 33, 41, 60 L. Ed. 131, 135.

"The discrimination is against aliens as such in competition with citizens in the described range of enterprises, and in our opinion it clearly falls under the condemnation of the fundamental law." (*Ibid.*, p. 43.)

Can this case stand as an example of a case decided upon the rights of an amorphous class, strangers to the action. The language of the Court is directed entirely to the constitutional rights of the appellee and brought the case within the uniformly recognized "standing rule." Clearly this case contains no language recognizing any exception to the "standing rule," but instead is cited in the same breath with, and for the same proposition as, *Ferrance v. Thompson*, 263 U. S. 197, 68 L. Ed. 255, and *Truax v. Corrigan*, 257 U. S. 312, 66 L. Ed. 254, in *Pierce v. Society of Sisters*, 268 U. S. 510, 536. Can these four cases be cited as authority for any exception to the "standing rule," much less the distinction between legislative action and court action relied upon by the majority opinion?

Suppose *Truax v. Raich, supra*, were a contract case. Suppose first that the employer had signed a valid contract with other employers by which they all agreed that not over 20% of their employees would be aliens. *We are not now concerned with non-federal questions.* Suppose the alien brought suit to require the employer to breach that contract based solely on the strength of

constitutional rights. Petitioners will not hazard a suggestion as to what the result would be. Whether or not this Court would cite *Truax v. Raich* as controlling is immaterial to the case at bar because such a case would not be analogous to the case at bar. In such a case the non-contracting, non-consenting alien would be identified, he would be before the Court, and his rights, if any, could be analyzed in an existing justiciable set of facts.

On the other hand, suppose that, after the employer signed the valid contract for consideration, he breached the valid contract. Suppose one of the other signers of the valid contract could show damages as a result of the breach and sued the first employer for those damages. Suppose the state court held that the contract was valid and that the complaint stated a cause of action for damages for breach of contract on common law principles. What *constitutional* defense would this signer of a valid contract have? He could not properly cite *Truax v. Raich, supra.* That case would not even be material to *his* defense to *his* contract much less controlling.

Every United States Supreme Court case cited by the majority opinion in the case at bar either recognizes the "standing rule" and expressly brings the claimant within it by showing his constitutional rights or else omits any consideration of standing at all. No case is cited wherein the Supreme Court of the United States has ever recognized any exception to the "standing rule," *i. e.*, the constitutional limitation upon the jurisdiction of this Court to the adjudication of the rights of litigants before this Court only.

One case is cited wherein a minority of the justices of the Supreme Court of California stated as dicta a claimed "well-defined" exception to the "standing rule." That case is *Quong Ham Wah Co. v. Industrial Acc. Comm.* (1920), 184 Cal. 26.

In that case an employer claimed that the workmen's compensation statute of California was unconstitutional as to injuries occurring outside the state to persons employed within the state for the reason that it applied to residents of California only. Four concurring opinions were written: One by Mr. Justice Lennon was concurred in by Mr. Justice Lawlor and Mr. Justice Sloane; one by Mr. Justice Olney; one by Mr. Justice Shaw was concurred in by Chief Justice Angellotti; and one by Mr. Justice Wilbur.

Mr. Justice Lennon stated one of "one or more of the recognized exceptions to the general rule enunciated in the *Estabrook* case" as follows:

> "Thus, where no member of a class alleged to be unlawfully discriminated against by a statute is in a position to raise the constitutional question, then any person affected by the application of the statute can urge its unconstitutionality."

Mr. Justice Lennon feels that his is a recognized exception because of only two cases, *i. e., Greene v. State* (1908), 83 Neb. 84, 119 N. W. 6, and *Buchanan v. Worley*, 245 U. S. 60, 62 L. Ed. 149. In *Greene v. State, supra*, a defendant was convicted of violation of a statute which made that defendant guilty of a crime for extortion against a citizen of Nebraska but which would not punish a person who committed the same act

against a non-citizen of Nebraska. The Nebraska court thought that the only discrimination was against non-citizens and held that the defendant could assert the constitutional rights of the non-citizens because they could not themselves challenge the statute. The Nebraska court and Mr. Justice Lennon failed to realize that the statute applied unequally to the defendant without a reasonable classification and denied him equal protection of the laws. It is significant that in the forty-five years since the *Greene* case was decided it has only been cited twice by the courts of Nebraska and has never been followed by any other decision in Nebraska on the "exception" stated. Petitioners cannot find where it has ever been followed by any judge in the United States except the three out of seven justices in *Quong Ham Wah Co. v. Industrial Acc. Comm., supra.*

In addition to *Greene v. State, supra,* Mr. Justice Lennon understood the decision of this Court in *Buchanan v. Worley,* 245 U. S. 60, 62 L. Ed. 149, to be "precisely in point in the instant case." In other words, Mr. Justice Lennon thought that this Court had departed from the constitutional limitation upon jurisdiction commonly called the "standing rule" in deciding *Buchanan v. Worley, supra;* whereas, in fact, this Court expressly recognized the "standing rule" as controlling and based its decision upon the constitutional rights of the plaintiff in error.

After defining an exception dependent upon the existence of a class which could not test the constitutionality of the statute, Mr. Justice Lennon goes on in his opinion to hold that the Constitution prevents the limitation of the workmen's compensation statute benefits to

residents and automatically extends them to non-residents. Clearly, therefore, non-residents could file claims for compensation and, by successfully asserting their constitutional rights, obtain the benefits. (*Comm. Cas. Ins. Co. v. Ind. Acc. Comm.*, 110 Cal. App. 2d 83, 242 P. 2d 13.) This being the case, the condition upon which Mr. Justice Lennon's exception was based did not exist in that case according to his own opinion. Therefore, the application of the exception was erroneous and its discussion *obiter dictum.*

It is most significant that the *Quong Ham Wah Co.* case had been heard before by the Supreme Court of the State of California.

The decision upon the first hearing reported in 59 Cal. Dec. 18, was also written by Mr. Justice Lennon and concurred in by a majority of the then Court including Mr. Justice Olney and Mr. Justice Shaw. Mr. Justice Wilbur wrote a brilliant dissenting opinion. The first decision expressly overruled *Estabrook Co. v. Industrial Acc. Comm.*, 177 Cal. 767, 177 Pac. 848, and relying solely upon the exception claimed to the "standing rule," held the statute unconstitutional and reversed the award of the Commission. In his opinion after rehearing, Mr. Justice Lennon reaffirmed his exception to the "standing rule" by *obiter dictum;* and, after finding the statute constitutional by extending it to non-residents, he *affirmed* the award of the Commission.

Mr. Justice Shaw, *who had concurred* with Mr. Lennon's exception to the "standing rule" in the first opinion, did not concur when it was repeated in the second decision; but instead he wrote a separate opinion in which he only agreed with the *conclusion* that the peti-

tioners had standing and added his weight to the second part of Mr. Lennon's opinion, to wit, "that the provision of the Constitution of the United States, *ipso facto*, carries this privilege to and confers it upon every citizen of any other state whose contract of employment is made in this state, and thus prevents the statute from being discriminatory in effect." This opinion was concurred in by Chief Justice Angellotti.

Mr. Justice Olney, who had also concurred with Mr. Justice Lennon's exception to the "standing rule" in the first decision overruling *Estabrook Co. v. Industrial Acc. Comm.*, 177 Cal. 767, 177 Pac. 848, did not concur in the second opinion; but, instead, he wrote a separate concurring opinion expressly rejecting the discussion of the *Estabrook Co.* case, *supra*.

Mr. Justice Wilbur's concurring opinion is in keeping with his dissent to the first opinion but concurs with the right of non-residents to the benefits of the statute.

It is plain that as to the first part of Mr. Justice Lennon's opinion in *Quong Ham Wah Co. v. Industrial Acc. Comm.* (1920), 184 Cal. 26, *the only part material here*, he spoke only for himself and two other justices, while four justices did not concur. Instead they wrote concurring opinions omitting the exception to the "standing rule" or rejecting it but concurring with the second part of Mr. Justice Lennon's opinion extending the benefits of the statute to non-residents.

It is plain therefore that the first part of Mr. Justice Lennon's opinion expresses the view of a minority of the justices; while the second part expressed the unanimous view of all the justices. Petitioners can find where the second, *i. e.*, unanimous, part of Mr. Justice Lennon's

opinion has been cited in nineteen cases including four decisions of this Court; but petitioners can only find five cases which have cited the first part of that opinion; and three of those cases cited it only to distinguish it. Those three cases are *Ex parte Nowak*, 184 Cal. 701, 195 Pac. 405; *People v. Globe Grain & Milling Co.*, 211 Cal. 127, 294 Pac. 5, and *Security-First National Bank v. Bank of America*, 7 Cal. 2d 771, 59 P. 2d 1023. The first part of Mr. Justice Lennon's opinion in *Quong Ham Wah Co. v. Industrial Acc. Comm., supra, i. e.*, the view of the minority of that court, has been cited and followed only twice since 1920, in spite of the frequency of cases where one of the litigants is barred from success by the "standing rule." Those two cases are *Pac. Indemnity Co. v. Myers* (1931), 211 Cal. 645, 296 Pac. 1087, and *Van Camp Sea Food Co. v. Newbert* (1926), 76 Cal. App. 445, 244 Pac. 949. Petitioners can not find where this view of the minority of justices has ever been cited or followed in any other jurisdiction except the opinion of the majority in the case at bar.

In *Pac. Indemnity Co. v. Myers, supra*, the only case in the Supreme Court of California to follow the alleged exception to the "standing rule," the exception was not contested or in other words, the petitioner lost that point and therefore, the case *by default*.

> "Counsel for the petitioner, however, do not dispute the existence of the rule, referred to by both parties as an exception to the general rule, that when

no member of the injured class can complain the question may be raised by anyone whose interests are affected."

*Pacific Indemnity Co. v. Myers*, 211 Cal. 635, 644, 296 Pac. 1084.

In the case of *Van Camp Sea Food Co. v. Newbert, et al.*, 76 Cal. App. 445, 244 Pac. 946, the Sea Food Company filed an application for an order allowing it to reduce 4,500 tons of sardines to fertilizer. The application failed to state the present capacity of the plant as required by the statute, but instead stated the future expected capacity. The Commission issued the order subject to a condition. Sea Food Company seeks to mandamus the issuance of an order without condition. The Commission points out (1) that the Sea Food Company's application is fatally defective, and (2) that the statute is unreasonable in permitting canners of sardines to reduce 25% to fertilizer but not permitting other packers the same right. The Court held that the conditional permit issued by the Commission was not based on statutory facts and was a nullity and that for the same reason petitioner's application did not justify any new permit, conditional or otherwise under the statute. Having thus disposed of petitioner's interest, the Court nevertheless proceeded on the strength of the exception to the "standing rule" expressed by Mr. Justice Lennon and a minority of the Court in *Quong Ham Wah Co. v. Ind. Acc. Comm.*, *supra*, and declared the statute unconstitutional.

In this connection petitioners wish to quote from page 6 of the majority opinion in the case at bar:

> "There are still other cases in which the Court has held that even though a party will suffer a direct substantial injury from application of a statute, he cannot challenge its constitutionality unless he can show that he is within the class whose constitutional rights are allegedly infringed. (Citing cases.) One reason for this ruling is that the state court, when actually faced with the question, *might narrowly construe the statute to obliterate the objectionable feature*, or it might declare the unconstitutional provisions severable." (Emphasis added.)

The *Van Camp Sea Food Company* case is a most excellent example of the wisdom of the statement quoted above, particularly the portion emphasized, in view of the rule of *Estate of Johnson*, 139 Cal. 532, 73 Pac. 424, approved by all of the justices in *Quong Ham Wah Co. v. Industrial Acc. Comm., supra.* Similarly, because of this rule of the *Estate of Johnson*, one of the bail discriminated against in *Pacific Indemnity v. Myers, supra,* might assert his own constitutional right to equal privileges; this possibility removes the condition upon which the alleged exception is based. Yet the Court applied the exception and destroyed a remedial statute.

The folly of the exception to the "standing rule" expressed by a minority of the justices in *Quong Ham Wah Co. v. Industrial Acc. Comm., supra,* could not be more plainly illustrated than in that case and the two following it.

Yet that case is the only case cited by the majority opinion in the case at bar which recognizes any exception to the otherwise uniformly recognized and controlling constitutional limitation upon the jurisdiction of this Court. Can it be said that that case is an authority in this Court for any exception much less the distinction spelled out by the majority between cases testing legislative action and cases testing court action, since that case was a statute case and flies in the teeth of the reasons given by the majority opinion herein for the "standing rule" in statute cases.

Petitioners pray this Court to consider the pernicious effect upon litigation in all states if this indefensible opinion of a minority of the justices of the Supreme Court of California is elevated and adopted as the majority opinion of the Supreme Court of the United States and permitted to retain that position.

Petitioners respectfully recommend for the consideration of this Court the profoundly wise language of Mr. Justice Frankfurter in *Joint Anti-Fascist Refugee Com. v. McGrath*, 341 U. S. 123, 149-150, 95 Fed. 817, 842:

> "The more issues of law are inescapably entangled in political controversies, especially those that touch the passions of the day, the more the Court is under a duty to dispose of a controvery within the narrowest confines that intellectual integrity permits . . . But in a case raising delicate constitutional questions it is particularly incumbent first to satisfy the threshold inquiry whether we have any business to decide the case at all. Is there, in short, a litigant

before us who has a claim presented in a form and under conditions 'appropriate for judicial determination?' "

Mr. Justice Frankfurter is referring to the presence of constitutional rights of the litigants themselves. Mr. Justice Frankfurter went on to find constitutional rights of the petitioners themselves. The majority opinion in that case also recognized that the "standing rule" required the petitioners to rely upon their own constitutional rights and held that such rights existed.

Petitioners respectfully submit that it is the Constitution of the United States which places the "standing rule" limitation upon the jurisdiction of this Court[3] and it is this Court which determines whether it will respect that constitutional limitation. It is the sacred duty of the Justices of this Court to observe and obey that constitutional mandate. This duty is not performed by stating that an exception exists. The language of the constitution does not disclose it. Nor does the combined wisdom of all past decisions of this Court support it.

Petitioners respectfully submit that a rehearing should be granted by this Court to reexamine the application of this "standing rule" in this case in the light of these considerations not heretofore advanced by petitioners who reasonably relied upon the belief that this rule was not open to question.

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[3] "The requirement of standing is often used to describe the constitutional limitation on the jurisdiction of this Court to 'cases' and 'controversies.'" (See page 5 of the opinon of the majority in the case at bar.)

**B. The Court's Decision Is Based Upon Considerations Which Petitioners Did Not Have an Opportunity to Brief or Argue, to-wit:**

1. **The Constitutional Rights of Classes,**
2. **Whether the Class Designated "Non-Caucasian" Has Any Constitutional Rights Which Might Be Affected by a Judgment for Petitioners,**
3. **Whether a Judgment for Petitioners Would Affect Those Rights if Any Exist.**

Petitioners did not have an opportunity to brief or argue the considerations upon which the decision was based for the reason that overwhelming authority in the form of countless decisions of this Court established that this Court had jurisdiction to consider the rights of litigants only. This invariably controlling rule prohibited argument based on the rights of strangers to the action as irrelevant and an unnecessary burden on this Court.

Perhaps the most scholarly and most highly esteemed treatise concerning the Appellate Jurisdiction of the Supreme Court of the United States published in the United States is "Reynolds Robertson and Francis R. Kirkham, Jurisdiction of the Supreme Court of the United States," by Richard F. Wolfson and Philip B. Kurland, 1951, Matthew Bender & Company. Chapter 38 of that work is dedicated entirely to the rule which limited petitioners' briefs and arguments and begins as follows on page 541 thereof:

"§297. BASIC RULE—NECESSITY OF EXISTING OR CERTAINLY IMPENDING INJURY TO THOSE PERSONAL OR PROPERTY RIGHTS OF COMPLAINING PARTY WHICH ARE ENTITLED TO AND SUSCEPTIBLE OF PROTECTION BY JUDICIAL ACTION.

"So much of the discussion in the preceding chapters as dealt with the cognate requirement of case or controversy and with the subject of moot and abated cases has indicated the necessity that parties to cases heard in the Supreme Court establish their legal standing to invoke adjudication by that Court. But that discussion does not fully cover the requirements respecting the interest and status of parties. It is not sufficient that the issue presented be a live and not a moot one, that the parties be truly adversary, that the question urged be justiciable, and that the proceeding be one invoking the entry of a final judgment or decree. Something more has historically been necessary successfully to invoke the exercise of judicial power; *the showing of necessity for protection of rights personal to the parties before the Court—rights entitled to and susceptible of such protection.* As stated by the Court in the leading case of Tyler v. Judges of the Court of Registration (footnote, 179 U. S. 405, 406-407, 21 S. Ct. 206, 45 L. Ed. 252):

" 'The prime object of all litigation is to establish a right asserted by the plaintiff or to sustain a defense set up by the party pursued. Save in a few instances where, by statute or the settled practice of the courts, the plaintiff is permitted to sue for the benefit of another, he is bound to show an interest in the suit personal to himself, and even in a proceeding which he prosecutes for the benefit of the public, as, for example, in cases of nuisance, he must generally aver

an injury peculiar to himself, as distinguished from the great body of his fellow citizens.

"'The very first general rule laid down by Chitty, Pleading p. 1, is that "the action should be brought in the name of the party whose legal right has been affected, against the party who committed or caused the injury, or by or against his personal representative." An action on contract (p. 2) "must be brought in the name of the party in whom the legal interest in such contract was vested;" and an action of tort (p. 69) "in the name of the person whose legal right has been affected, and who is legally interested in the property at the time the injury thereto was committed." As stated by another writer: "No one can be a party to an action if he has no interest in it. A plaintiff cannot properly sue for wrongs that do not affect him, and on the other hand, a person is not properly made a defendant to a suit upon a cause of action in which he has no interest and as to which no relief is sought against him."'

"This historic view has from the outset been regarded as controlling the Supreme Court in the exercise of its original jurisdiction (footnote, See Sec. 302, *post*) and as constituting a component element of the statutes delimiting its appellate jurisdiction (footnote, Tyler v. Judges of the Court of Registration, 179 U. S. 405, 407, 21 S. Ct. 206, 45 L. Ed. 252; Marshall v. Dye, 231 U. S. 250, 257-258, 34 S. Ct. 92, 58 L. Ed. 206.)

"It results that in every case coming to the Supreme Court, whether invoking the exercise of its original jurisdiction or seeking review of the decision of state or lower federal court, *it is a jurisdictional prerequisite that the Supreme Court be satisfied that the suit involves the vindication of rights personal*

*to the parties thereto,* which are entitled to and susceptible of protection by judicial action in that proceeding, and which are being invaded, or the invasion of which is certain and impending. (Footnote, 'see all cases cited in this chapter.')". (Emphasis added.)

(1) The Constitutional Rights of Classes.

The decision of June 15, 1953, is based upon the rights of a class unrepresented by a member thereof as a party to this action and without any consideration of the rights of the class to which the litigants belong. Heretofore this Court has not permitted any presentation of the rights of classes because of the rule that only the constitutional rights of litigants are justiciable. Now, however, if the rights of one class is properly before the Court, the rights of the class to which the parties belong is also.

Freedom of association is a constitutional right as implicit and absolute as the right to be free from illegal imprisonment or restraint. If it is to be regulated, it must be by legislation which is reasonably related to a valid legislative purpose, and the determination is legislative.

Petitioners wish to point out, on behalf of the class to which they belong, that these racial restrictive covenants are not just examples of some wilfulness of man and do not merely represent man's inhumanity to man. It does not help us not to recognize that behind this are certain facts of life. We cannot escape facing those sociological facts if we open this case to the rights of classes, which petitioners feel should not have been done. But since it has been done, let us face the facts.

According to an article on page 4 of the February 26, 1953, issue of one of two Negro newspapers published in Los Angeles "approximately one-half of the arrests for narcotics in the city of Los Angeles involves Negroes."

This newspaper is not an irresponsible scandal sheet. It is published by one of our most respected Negro citizens who is a leader in all Negro affairs.

One of the reasons given in that article for the disproportionate number of arrests of Negroes for narcotics violations "is the fact that unlike most addicts, he dresses the part. A 'gas' cigarette holder, exaggerated clothes, and a 'real cool' attitude to everybody and everything, are standard equipment. Thus, the average Negro who has been wearing the 'monkey on his back' for any length of time can easily be spotted."

It is significant that the article uses the term "average Negro."

The principal reason cited by the article for the disproportionate number of arrests of Negroes is the unequal administration by the police department.

According to the "Uniform Crime Reports for the United States and its Possessions" issued by the Federal Bureau of Investigation, United States Department of Justice, Volume XXIII, Number 2, Annual Bulletin, 1952, United States Government Printing Office, Washington, 1953, 64% of the persons arrested in the 232 cities reported in 1952 for murder and non-negligent manslaughter were of the Negro race. 44% of the persons arrested for robbery were Negroes, 64% of persons arrested for aggravated assault were Negroes, 40% of persons arrested for other as-

saults were Negroes, 30% of persons arrested for burglary-breaking or entering were Negroes, 32% of persons arrested for larceny-theft were Negroes, 19% of persons arrested for auto theft were Negroes, 17% of persons arrested for embezzlement and fraud were Negroes, 34% of persons arrested for stolen property, buying, receiving, etc. were Negroes, 14% of persons arrested for forgery and counterfeiting were Negroes, 38% of persons arrested for rape were Negroes, 29% of persons arrested for prostitution and commercial vice were Negroes, 24% of persons arrested for other sex offenses were Negroes, 47% of persons arrested for violation of narcotic drug laws were Negroes, 59% of persons arrested for carrying, possessing, etc., weapons were Negroes, 29% of persons arrested for offenses against family and children were Negroes, 45% of persons arrested for violation of liquor laws were Negroes, 15% of persons arrested for driving while intoxicated were Negroes, 35% of persons arrested for disorderly conduct were Negroes, 17% of persons arrested for drunkenness were Negroes, 22% of persons arrested for vagrancy were Negroes, 69% of persons arrested for gambling were Negroes, 26% of persons arrested for suspicion were Negroes, 26% of persons arrested for all other offenses were Negroes.

Only 10% of the population of the United States, according to the 1950 decennial census are Negro. It is important to note that the largest percentages above appear in the crimes of violence: Murder, 64%; Aggravated Assault, 64%; Rape, 38%; Narcotics, 47%; Carrying and possessing weapons, 59%.

The following is quoted from page 2 of the "Report to the Governor's Council Meeting of May 25, 1953,"

by the California Youth Authority on its "Departmental Activities During April, 1953":

"RACIAL PROBLEMS CONTINUE ACUTE.

"It becomes increasingly apparent to persons with firsthand knowledge of the problem that tension between certain segments of the Los Angeles population is increasing. Part of the difficulty stems from the expanding population of minority groups with consequent overflowing into new neighborhoods. Incidence of individual fights between members of racial groups, vandalism in schools, and slight increase in gang activities in schools formerly free from such a problem, indicate the heightened tension in certain areas of the city. The Los Angeles Probation Department has assigned one full-time person to study the problem to determine its actual nature and scope. The Chief of Police of the Los Angeles Police Department has pointed out that last year's arrest statistics indicated a decrease in arrests in all categories of crime with the exception of those of violence and narcotics violation. In these last two categories, significant increases were noted.

"It is the opinion of some persons that part of the explanation of an uprising in those crimes is to be found in the increasing tension in certain segments of the population. Several service agencies, some of whom are leaders among the minority groups, are synchronizing their activities in an approach to a solution to this problem. Representatives from many of the service groups met with the Youth Authority parole staff in Los Angeles to discuss methods whereby the activities of the Youth Authority parole staff could be closely integrated with other groups from the community in an attempt to solve this racial problem."

These are some of the facts of life that force peaceloving people to join racial restrictive covenants. These covenants are valid and constitute a legitimate exercise of the "freedom of the individual in and under a democracy" which has "implicit in it, as an absolute, the freedom of association."

See:

*Re Noble and Wolf, Ontario Weekly Notes* (1949), at page 488.

Merely occupying houses in white neighborhoods is not all that Negroes want. This is apparent from the articles published in every national Negro magazine known to petitioners.

Attached hereto as Appendix "A" are the cover and pages 16, 17, 18 and 19 of the June, 1953, issue of the national Negro magazine "Color." This article complains of "red tape" which obstructs marriages between American Negro soldiers and white German women.

The June, 1953, issue of "Sepia," national Negro magazine, contains on pages 8, 9 and 10 thereof (see App. "B"), an article contrasting the marriage to a Negro of a white woman in California with two young children by a former white husband, with marriage to a white man of a Negro woman with two young children by a previous marriage. The father of the white children obtained their custody in a California court.

Attached hereto as Appendix "C" are the cover and pages 71, 72 and 73 of the July, 1953, issues of the national Negro magazine "Ebony," sold in June, 1953.

Every national Negro magazine known to petitioners on the newsstands this month, June, contains one or more articles, either featuring or displaying intermarriage between Negroes and whites and in other ways illustrating the example being set for Negroes. There is no room in the philosophy being taught to Negroes for the white man's personal freedom of choice of associates. This attitude among Negroes who move into white neighborhoods adds to the other factors which, equally understandably, make them unwelcome neighbors.

The pattern is the same in every neighborhood. When the first Negro moves in, there is a panic among the white residents to sell out and move away. "They can run but they cannot hide." This was the expression used by one of the columnists in reference to white people in his article in the February 14, 1952, issue of the Negro newspaper referred to heretofore. There is a market among Negroes for only a few of the homes thus offered for sale. The market among white people has disappeared at the price the property would have brought if the neighborhood were "lily white." This is the term used by Negro papers all over the nation for a neighborhood which does not have Negro residents. White people will not pay the same price for at least two reasons: First, there are fewer white people who are willing to buy into the neighborhood, with the consequent effect of supply and demand on the price; and second, those who are willing to buy into the neighborhood know they can get it for less. This second reason applies also to possible Negro purchases. The result is that when a house is occupied by Negroes, the neighboring property owners suffer severely, both in the value of their property to them and in its sale value on the market.

(2) The Class Designated "Non-Caucasian" Has no Constitutional Rights Which Might be Affected by a Judgment for Petitioners.

The right which the Court feels the unidentified class has is defined by the majority opinion in these words:

> "If a state court awards damages for breach of a restrictive covenant, a prospective seller of restricted land will either refuse to sell to non-Caucasians or else will require non-Caucasians to pay a higher price to meet the damages which the seller may incur. Solely because of their race, non-Caucasians will be unable to purchase, own and enjoy property on the same terms as Caucasians. Denial of this right by state action deprives such non-Caucasians, unidentified by identifiable, of equal protection of the law in violation of the Fourteenth Amendment."

It is indeed a very startling idea that the unidentified non-Caucasians have constitutional rights in the private property of prospective sellers which are constitutionally beyond the reach of the record owners of that property. It is a surprise to the owner of the land in fee simple absolute to learn that unidentified strangers to him have constitutional rights in his property which he cannot contract away. It is even more surprising that this right should exist today although this prospective seller is not a party to this or any action and exist today even though this prospective seller has not now and may never in the future ever receive an offer to purchase from any non-Caucasian.

By far the most alarming aspect of the rule stated above is that unidentified non-Caucasians have a right to purchase private property from private parties free

from any consideration of race. If there is such a right, a non-Caucasian could file suit as plaintiff to have this right vindicated. Surely we have not come to a state of the law where valid contracts cannot be enforced in any way by anyone and valid rights in property cannot be asserted by the persons to whom they belong, but only by strangers?

Surely, it must be clear that unidentified non-Caucasians can have no right in unidentified property belonging to unidentified owners in fee simple absolute.

Petitioners respectfully submit that before such a rule be permitted to stand, a rehearing should be granted to petitioners so that the point may be thoroughly brief and argued.

(3). Judgment for Petitioners Cannot Affect Any Supposed Rights of Unidentified Non-Caucasians.

The language of the majority opinion defining the supposed rights of non-Caucasians in unidentified property is quoted again:

> "If a state court awards damages for breach of a restrictive covenant, a prospective seller of restricted land will either refuse to sell to non-Caucasians or else will require non-Caucasians to pay a higher price to meet the damages which the seller may incur. Solely because of their race, non-Caucasians will be unable to purchase, own, and enjoy property on the same terms as Caucasians."

This statement presupposes that all property is subject to restrictions, for only in that event would non-Caucasians be unable to purchase, own, and enjoy property on the

same terms as Caucasians. The facts are that all public housing is unrestricted, all F. H. A. housing begun since February 15, 1950, is unrestricted [see R. 56], a large percentage of restrictive covenants have expired by their terms, a large percentage of restrictive covenants are worded in such a way that they can only be enforced in equity, which would be barred by the *Shelley* case, finally, a large percentage of the few covenants which could be enforced in damages, could not be enforced against the present owner because he is not the original signatory[4] and therefore he would have no hesitancy to sell to non-Caucasians.

The supposed effect of a judgment for petitioners upon non-Caucasians is entirely speculative. There is nothing in the record to indicate that non-Caucasians cannot purchase all the homes they can afford from F. H. A., unrestricted property, property subject to unenforceable covenants and property developed by their own entrepreneurs. Petitioners should be given an opportunity to

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[4] "As a general rule, liabilities cannot be transferred, nor assigned; but there is an exception to this rule in case of covenants running with the land, in which case a grantee is liable for breaches which occurred *while he holds the estate in the land.*" (Emphasis added.)

15 C. J. 1301.

"Sec. 1466. Who are not. No one, *merely by reason of having acquired an estate subject to a covenant* running with the land is liable for a breach of the covenant before he acquired the estate, *or after he parted with it or ceased to enjoy its benefits.*" (Emphasis added.)

Civ. Code, Sec. 1466.

see the basis for claims that non-Caucasians cannot purchase, own or enjoy property. Petitioners should have an opportunity to refute those claims. It should be remembered that this is the first time that the Supreme Court of the United States has decided a case upon the alleged rights of a class not represented by a member before the Court. For that reason alone, a rehearing should be granted to permit a consideration of the rights of other interested classes, particularly the one to which petitoners belong.

Petitioners respectfully submit that in considering the rights of these respective classes, the Court should be mindful of the following statement of this Court in the *Civil Rights Cases,* 109 U. S. 3, 25:

> "When a man has emerged from slavery, and by the aid of beneficient legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights, as a citizen or a man, are to be protected in the ordinary mode by which other men's rights are protected."

Petitioners respectfully submit that much of the unrest and friction now existing and growing between the races would cease if the leadership of certain minorities would not so persistently and fanatically urge their members to insert themselves like a sliver under the fingernail of white society.

For the reasons set forth hereinabove it is respectfully urged that a rehearing of the above-entitled cause be granted and that, upon such rehearing, the judgment of the District Court of Appeal of the State of California, Second Appellate District, be reversed and the cause be remanded for trial.

Respectfully submitted,

JOHN C. MILES,
J. WALLACE MCKNIGHT, and
CHARLES LELAND BAGLEY,
By J. WALLACE MCKNIGHT,
*Counsel for Petitioners.*

**Certificate of Counsel.**

I hereby ceritfy that the foregoing petition for rehearing is presented in good faith and not for delay.

J. WALLACE MCKNIGHT,
*Counsel for Petitioners.*

GISELA, 14, and her six-year-old half brother enjoy playing out-of-doors, doing a balance act on a sidewalk railing near their home.

the court will oblige him to contribute to the support of the child until it reaches the age of 16. The amount of the support awarded will vary in each case, and will usually depend on the economic status of both parties.

It is a certainty that all over the world at present men are searching their souls and thinking back to rosier "never had it so good" days. And many others are living their normal lives, little suspecting the events now in motion which may present them with a white envelope of trouble and thought this year 1953.

FOR SOME COUPLES, white and colored, the new provision may provide the spark which will bring forth happy reunions and the traditional "happiness ever after." Whatever the outcome, the new provision is certain to raise controversy and discussion, once the cold wheels of justice begin their international duties. THE END.

COULD SHE BE JEALOUS of his call? Torsten says "don't bother me" to Gudrun, his blonde kindergarten girl friend.

NOT READY for the Army yet, Torsten poses with his daddy's uniform head piece.

ICE CREAM and Gene Autry. How American. Torsten teaches his pals how to be smart cowboys.

BEFORE TORSTEN CAME to school he spent much of his time in this German kindergarten playing with toys sent from overseas by USA-Welfare organizations.

# Color

## THE MEN THAT RUIN WOMEN

JUNE 1953

25¢

## RED TAPE STOPS GIs IN GERMANY FROM MARRIAGE

FIERY FRANCINE

## The Man who Did More for Baseball than Jackie Robinson

# RED TAPE STOPS G.I.s IN

POSING FOR FAMILY portrait are Sfc. John A. Wall, baby Astrid, Mrs. Emmy Schucht, Torsten and white daughter, Gisela. Mrs. Schucht is a divorcee.

*Mixed Couple in Frankfurt Not Allowed to Marry Under U. S. Army Rules; Girls Can Now Sue for Kid's Support*

# GERMANY FROM MARRIAGE

**by Golf Dornseif**

FOR THE FIRST time approximately 3,500 colored six-year-old boys and girls had to register in the Bonn-Republic's schools last spring 1952 with some 2,000 more going to the class rooms Easter time 1953.

One of these kids is Torsten Schucht-Wall, star of our picture-story and a Frankfurt citizen.

TORSTEN'S FATHER is Sfc. John A. Wall, a 32-year-old US-Army truck-driver stationed in Nuremberg, Germany. The boy's mother, 44-year-old German housewife Emmy Schucht got a divorce from her German husband in 1945 to live with Sfc. Wall.

The German-American couple, who are not allowed to marry under present US-Army laws, have three children. They are young Torsten, a nine-months-old girl, Astrid, and 14-year-old Gisela, white, daughter of Frau Schucht's German ex-husband.

THESE FIVE PEOPLE live in Westhausen, a Frankfurt suburb, and Torsten and Gisela go to Praunheim Elementary School a few blocks from their four-room apartment. Frau Schucht is a secretary employed with a local German firm and her eldest daughter, Gisela, takes care of the household while Mama works in a downtown office.

Although John and Emmy are unable to marry for the time being they live as happily together as possible with John getting many overnight passes through the channels of an understanding CO who knows how bitter it is to live separated in different towns.

HAVING LITTLE or no knowledge at all concerning the strange paths of US-Government and Army-routine, German school and welfare officials have already stopped wondering about what servicemen and officers may do or not do in the Bonn-Republic. Problems like marriage, adoption, etc., are handled in so many different ways depending on citizenship, unit commander, and good will of numerous other people that things are mixed up like never before.

As for the Schucht-Wall-family all are well-respected citizens of their community and treated very friendly by the neighbors in Westhausen. Nobody has ever started discriminating the children or Mrs. Schucht because of their inter-racial relations with Sfc. John A. Wall. On the contrary, Torsten has white playmates by the dozens who don't care a damn about his chocolate complexion.

GENERALLY SPEAKING an estimated 96,000 US., British, and French servicemen have fathered illegitimate children—5,000 of them colored—during the past seven years in Germany.

Some of these fathers have married the mothers, some have acknowledged paternity before an Allied court, some have simply and voluntarily agreed to support their children and the mother as in the case of Sfc. John A. Wall who can't get a marriage certificate although he would like to marry his fiancée Emmy Schucht as soon as possible.

BUT THE MAJORITY have disappeared beyond the seas and across the borders, leaving their children—and a large scale problem—behind in Germany. The unwed mothers of these children have fought a long, uphill battle during the last seven years for the right to sue their khaki-clad Romeos for support of the children.

Their battle has now been won.

WITH RATIFICATION of the Bonn-Republic Contractural Agreement with NATO this Spring, German girls are now free to sue their tan ex-lovers in order to get paid the amount of money needed for raising the occupation kids.

Some 45,000 white and colored Americans, 40,000 Britishers and 10,000 Frenchmen, many of them colored too, face the possibility of a court suit or a settlement based on actions which may date back seven years to the early, lax days of the "love 'em and leave 'em" tradition of all conquerors.

ALTHOUGH 600,000 illegitimate children have been born in Germany since the end of World War II, the 96,000 white and colored occupation babies have constituted a special problem because of the lack of specific legislation providing for their care. Up till now the decision to accept moral and legal responsibility has rested squarely with the father.

Marriage has provided only an occasional solution to the many temporary arrangements, partially because of strict laws dating back to early occupation days which required (*Continued on next page*)

THIS IS ASTRID, nine-month-old sister of Torsten.

PROMINENT MEMBERS of newly established "League for the Protection of Colored German Nationals Against Racial Discrimination" are Mrs. Bertha Roemer, Dr. Wilfibald Schmidt and Heinz Kromer. They are high-ranking school officials.

SFC. JOHN AUSTIN WALL and his son, Torsten, are the best of pals. Since the German side of the family could not understand English, John had to learn German which he now speaks fluently

"DADDY" WALL enjoys wearing German house jacket, typical for husbands resting at home. Torsten and Astrid feel like riding on horseback.

SCHOOL REGISTRATION was an exciting affair for Torsten. Norbert Herold (left), Torsten's kindergarten-mate; Torsten, Mrs. Emmy Schucht, mother; and school principal Dr. Wilhelm Luh sign documents.

TORSTEN IS VERY POPULAR with his classmates in Frankfurt's Praunheim-Elementary School. His best playmate, Norbert, sits next to him scribbling on his slate.

# Red Tape Stops G.I.'s In Germany from Marriage

(*Continued from page* 17)

that a soldier married to a German national leave the area within a 90-day period.

### Permission Required

Army permission to marry is still required, visa permission, which demands checking through consular channels and compliance, with all visa restrictions, must also be obtained.

DESPITE THE ASSISTANCE of chaplains and other interested officials, few marriage papers, even hand-carried applications, can be accomplished in less than six weeks. Many a romance has blossomed and withered before an original application has been returned.

Some couples, faced with the choice of "being legal" and leaving, or "shacking up" and staying, have taken the easier road, only to have an abrupt transfer catch them with their paper work down.

STATISTICS SHOW that 25 percent of the departed Allied fathers have sent irregular voluntary financial aid to the girls they wooed and won in Germany. But for the other 75 per cent of the mothers things are fairly tough.

ITEM: Only one out of every three unwed mothers receives relief with the average check totalling about 25 Deemarks per month ($6.00).

ITEM: Many of the mothers have either low-paying factory or office jobs, but many more are among Germany's more than 1,000,000 unemployed.

### Morale Problem

The Armed Forces, in recognition of the morale problem which occurs when fathers are separated "suddenly from their family", have granted morale leaves to such men to enable them to return to Germany and marry.

RATIFICATION OF the contractual agreements by the Bonn-Parliament is the beginning of countless individual court cases which will be both time-consuming and expensive.

BIGGEST COST for the German women will be in hiring legal representation in the foreign countries involved. Affidavits testifying to knowledge of their affair by former friends and neighbors will be solicited. Legal experts say that love letters in the handwriting of the father will be especially valuable to the mother, and if a child is mentioned, the case is usually decided.

Such paternity suits could be embarrassing for many a (now) older and wiser man, possibly settled down in his homeland with a local wife and other children. Many such "respectable" men are expected to settle the case out of court to save expenses as well as to keep the German-speaking skeleton hidden in an other-world closet.

BUT IF THE father decides to fight the case and loses,

TORSTEN'S FIRST TEACHER, Ludwig Weber, is member of Society for Better Understanding of Christians and Jews and other organizations promoting cooperation with minorities.

IT COULD BE ART but only Torsten knows as he scribbles on his slate instead of doing home work for next school-day.

# SEPIA
RECORD

WAS WILLIE MCGEE
REALLY GUILTY?

INTERRACIAL
"Problem"
MARRIAGES

Grace del Marco
Model

ARE NEGRO
BIG LEAGUERS
SLIPPING?

June
25c

**True Story -- "My Son Was INSANE!"**

# INTER-RACIAL

## All marriages Can these

By BETH MICHAELS

**Interracial marriages have always been regarded as social T-N-T.**

**They've been "freak" affairs—viewed by the public with a strict "hands-off" attitude. Shunned by families (on both sides usually), and friends, the principals involved have been outcasts.**

**Thus, any interracial marriage starts off with two strikes against it. Here are two of the most recent victims of this social stigma.**

**And here are the facts in each union.**

**Do you think they can last?**

BECAUSE she married a Negro, a California mother, Mrs. Barbara R. Smith, is today faced with the loss of her two children.

Divorced from her white husband, she was given custody of their children without any protest or dissatisfaction.

Everything went along smoothly and everybody was happy, until she married a Negro. Then, trouble started.

Her ex-husband filed a petition on the grounds that "change of circumstance" for the children warranted his custody. He also protested that the man she married was of questionable character. In court, it was pointed out that there were two charges against Willie Taylor, the Negro husband. He was arrested while playing poker in a private home in 1946, and he is a Negro.

The father charged that his daughter, 10-year-old Amanda Smith, is living in a crowded apartment and as a result, is in poor health. It was established through testimony of physicians, psychiatrists and her school teachers that Amanda is in excellent health—both physically and mentally. The child testified that she'd rather live with her mother and that her stepfather was very kind to her and she is fond of him. It was established that the child's living conditions are equal to those of her former father and mother.

## This Woman Married a Negro--

MRS. BARBARA Smith nearly lost the custody of her two white children because she married a Negro man.

# PROBLEM MARRIAGES

## of this type create problems. couples overcome them?

Her welfare has been checked in every way and found to be satisfactory.

Yet, the problem remains. The child testified that she did not see anything wrong with her mother marrying a Negro — but in this case, it's not what she thinks, but what her friends and relatives think, that really matters. How will they treat her?

This little girl is torn between the love for her father and respect for her step-father. She wants to obey her mother and her father, but how can she when both have such different beliefs? Mr. Smith, Amanda's father, testified that the child's grandmothers, aunts and uncles have nothing more to do with Mrs. Taylor since she has married a Negro. Children always consider it a treat when they are taken for a visit to grandmother and grandfather's house. In fact, they enjoy visiting any relative. Can you imagine how she feels now that these visits have been denied?

Mrs. Taylor had worked at the United Motor Service in Berkeley for two years, but as a result of the publicity caused by the case, she lost her job.

Amanda testified that she loves her little half-brother, John, as much as she does her full-blooded, white brother, Eric. But as time goes on, it will be harder for her to prove it. She'll discover that while they have the same mother, there'll be many times when they won't be allowed to go through the same doors or associate with the same people.

If there are other children born to the Taylors what affect will it have on their lives? They have a chance to be white, but—no matter how white they are when born, they can be nothing but Negro.

(Please Turn Page)

## This Woman Married a White Man!

THINGS WERE a little smoother for Mrs. Alberta S. Briggs, a former barmaid, who married a millionaire.

# Millionaire marries barmaid

Will their parents' love and understanding be broad enough to make them want to be part of this mixed family or will they want to escape the complications?

If Mr. Taylor was a wealthy man, it would make things easier for the family but since he is not, all they can do is make the best of the situation. The luxuries that could be bought to help brighten the children's lives cannot be afforded.

Mrs. Taylor has an order from Judge Harold Jacoby of Contra Costa county restraining Mr. Smith from taking the children, Amanda, 10 and Eric, 3 out of the state, while the appeal is pending.

Mrs. Taylor will carry her fight to the Supreme Court if it is necessary. If she wins the case, that does not mean she will win peace and happiness with her family. The people around will see that she does not. After the trial is over, she'll still be on trial as far as they are concerned. Her family will be the center of gossip and curiosity.

**We must admit that marriages between Negroes and white create larger problems than any other interracial marriages. The sad part about them, is that the children are the ones who usually suffer most. Their parents ignore the risk of racial conflict and get married. They may love and understand each other, but when the children come along, instead of serving as a tie between the races, they become a problem, because there is no "in-between" race. They are not white and they are not Negro. It is easier for them to call themselves Negro because there are all shades of color in the Negro race and also, this race will accept them quicker than the white one.**

The children involved in the marriage between Mr. Ernest Briggs, the 67-year-old multimillionaire to Miss Alberta Sheffield, face a similar problem. Mrs. Briggs is the mother of two children, James, 3 and Leela, 2 by a previous marriage. The couple had been married a week before the news leaked out. Yet, when it was made public, the father of the two small children did not rush in to file a petition to take the children away from the mother because she'd married a white man.

It is true that the family is plagued by reporters and photographers—and even people who call because they are curious.

Everyone realized it was an unusual incident from many angles. First it was an interracial union. Secondly, it is the "Cinderella" type of wedding—since Mr. Briggs is a member of a moneyed auto parts family.

Thirdly, there's a vast margin between their ages—she being 32 and he, 67. We must admit that the publicity given them was far different from the cruel treatment given the marriage of the Taylors.

It has not thrown her two children into as much confusion and bewilderment. While the Taylors are sitting in constant tension, waiting and hoping for the best, the Briggs family is enjoying life and looking forward to a happy future together. The two children are being adopted by Mr. Briggs so they can share his name as well as his love and liberality. So far, in this case, there are no problems to mar this marriage.

*Why is there so much difference in the two cases? Does it mean that enough "cold cash" can prevent "hot gossip" from harming you? Or does it mean that the public feels that one mother reached up—while the other stooped down? What is your opinion in either case?*

**ERNEST BRIGGS talks over old times with dancing m.c., Shorts Davis.**

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## WHAT HAPPENED TO THE JONES BROTHERS?

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# LONDON'S SUNSET CLUB

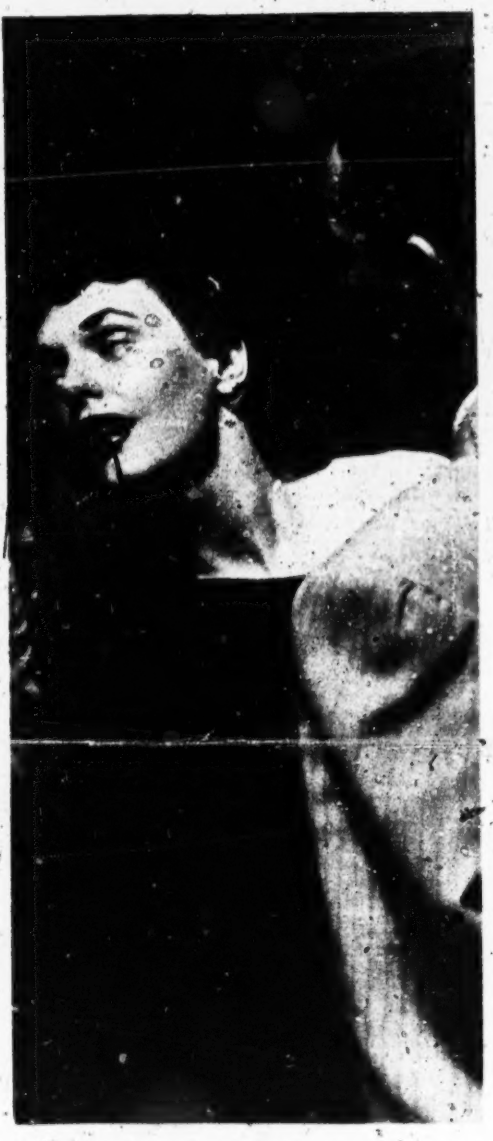
## Liquorless beige-and-blonde nitery is popular attraction

LONDON'S night clubs were carried to the peak of a glittery, noisy and liquory boom during the American "occupation." Today the melody lingers on in an institution brand new to England—the bumptious beige-and-blonde clubs, American style. Like Coca Cola and chewing gum, this startling import is now an integral part of the English social landscape. They do an exceptionally brisk business, catering to Negroes and white people who wish to frolic together in a congenial atmosphere.

Most typical of London's beige-and-blonde places is the Sunset Club, which has become so popular that any taxi driver's eyes brighten with recognition at the mere mention of its name. Situated on Carnaby Street in Soho, near famed Piccadilly, it is a low-ceilinged basement of a bombed-out building.

Serving only sandwiches and cokes (liquor is forbidden) and having just a passably fair floor show, the Sunset Club has just one main attraction. It is the spot where white women can go and dance freely with Negro men. And the club is packed seven nights a week.

**Dancing star** of Sunset Club show is Vera Antia, who entertains customers with a sensational shake dance done to the accompaniment of a five-piece jump band. Dancer from Cardiff, Wales, has been at club two years.



**Dancing couples at Sunset Club** include titled ladies as well as factory and shop girls. They have one thing in common—they love to dance with Negroes. Club has 500

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**Club is often so crowded** that seats are at a premium. Here Sgt. William Evans from New York lends his lap to tired dancer Nancy Gamey, a Scotch girl now in London. Girl beside Evans is from France. Club is open from 11 p.m. until 4 a.m.

# BRITISH GIRLS WHO BELONG

THE GIRLS who frequent the Sunset Club are a loyal and articulate contingent—almost fanatical in their devotion to the club, making no bones about their associations with Negroes. They are unanimous in the opinion that colored "boys" (as they call all swains of whatever color) are much more attentive and have much better manners than white men—and, most of all insist that Negroes have no peers as dancers.

They fail to understand color bars, especially those that exist in England. They even have shrugged off the boycott against them at the American Air Forces dances and clubs. The American girls who frequent the place have seemingly adopted the outlook of their English cousins.

The Sunset is no less attractive to the Negro GIs. "I first arrived here six months ago," explained one fellow, "and I was very unhappy about the whole thing at first. Every pay night I would come down to London or Oxford and really get clipped. If I wanted to talk to a girl, it would cost me $5 a round of drinks and I spent $30 before the night was over, and when I ran out of money, the girl went for another sucker. Then, I found out about the Sunset. It only cost me $3 to join and 50c admission charge each time I come. Here I drink cokes

**Vigorously rug-cutting.** Belgian girl Pearl Bram comes to Sunset Club every night, says she likes fast dancers. Negro GIs brought rug-cutting to Europe.

**Sitting out dance** to listen to hot saxist Al Timothy, Lady Luvina Dudley-Bateman is typical of the newsworthy names that frequent the Sunset Club. Lady Dudley-Bateman is a regular member of club, loves to dance with West Indians.

# TO CLUB IGNORE RACIAL BARS

at 25 cents each and I can have a good time even if I am broke. Besides, the girls here are nice—not the kind you find in bars."

The inconspicuous Negro host, Gustavos Leslie, who was born in Jamaica and lived in the U. S. for a spell, regards himself as something of a missionary in conducting the place. He came to London six years ago on a visit. He liked the city so well that he settled down and married a Danish girl who assists him in operating the club. His prime motive in opening the place, he says, was to provide a place where lonely Negroes could come and have fun cheaply. He remembers the days when he himself was a stranger to the city, so much so that when the cast of *Porgy and Bess* was having trouble finding accommodations, he stepped in and put them up at his own place. The Sunset Club, which performs a unique racial function in London, is his way of concretely helping fellow Negroes.

When Leslie first opened the Sunset Club there were very few Negro GIs around London and most of the club's membership was made up from the city's rather large West Indian group. Many were young students attending British schools. When American Negroes were brought to Upper Heyford and Lackenheath Air Force bases in number, many of these soldiers joined the club which stays open seven nights a week.

**Warm friendships and love affairs** have developed between couples who met at club. White Americans sometimes object to free and easy mingling of races at the Sunset.

*Continued on Next Page*


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**Searching patrons for concealed liquor,** Sunset proprietor Gustavos Leslie is cautious about conducting a respectable club to win police approval. Unlike most Soho district clubs, the Sunset vigorously bars admittance to all known prostitutes.

**Looking as "sent" as any American jitterbug,** English girl dances with Air Force soldier. In addition to the shop and factory girls who are there nightly, Sunset attracts a number of the footloose married women out for a clandestine night.

**Lingering goodnights at Sunset's doorway** at 4 a.m. closing time are common. Leslie changed name of club from Moonglow to Sunset because as he says, "The new name signifies a bright horizon and makes me feel much more optimistic."


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